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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,¹

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,²

USA SECURITIES, LLC,³
Debtors.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**THIRD OMNIBUS OBJECTION OF
USACM TRUST TO PROOFS OF
CLAIM BASED IN WHOLE OR IN
PART UPON INVESTMENT IN
ANCHOR B LOAN**

Date of Hearing: June 14, 2011

Time of Hearing: 10:30 a.m.

Estimated Time for hearing: 10 min.

The USACM Liquidating Trust (the "USACM Trust") moves this Court, pursuant to § 502 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order disallowing in whole or in part, the Proofs of Claim listed in **Exhibit A**. These

¹ This bankruptcy case was closed on September 23, 2008.

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 21, 2007.

claims were filed by investors (“Direct Lenders”) against USA Commercial Mortgage Company (“USACM”) based upon an investment in a loan to Anchor B, LP (“Borrower”). This loan was sometimes referred to as the “Anchor B Loan” and that is how the Trust will refer to it here. This Objection is supported by the Court’s record and the Declarations of Geoffrey L. Berman and Edward M. Burr in Support of Omnibus Objections to Proofs of Claim Based Upon the Investment in the Anchor B Loan. (the “Berman Decl.” and “Burr Decl.”).

THIS OBJECTION DOES NOT RELATE TO AND WILL NOT IMPACT THE DIRECT LENDERS’ RIGHTS TO REPAYMENT ON THE ANCHOR B LOAN OR TO SHARE IN ANY PROCEEDS GENERATED FROM THE SALE OF THE REAL PROPERTY SECURING THE ANCHOR B LOAN.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND FACTS

a. The USACM Bankruptcy

On April 13, 2006 (“Petition Date”), USACM filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Debtor’s post-petition management of the Debtor was under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC, who served as the Chief Restructuring Officer.

USACM was a Nevada corporation that, prior to the Petition Date, was in the business of underwriting, originating, brokering, funding and servicing commercial loans primarily secured by real estate, both on behalf of investors and for its own account. That business included the solicitation of investors to purchase fractional interest in loans that USACM originated and then serviced. These investors are referred to as “Direct Lenders” in USACM’s bankruptcy case and in this Objection.

On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No. 2376]. As part of the Plan, and pursuant to an Asset Purchase Agreement filed with this Court, USACM sold the servicing rights to most of the loans it serviced to Compass Partners, LLC and Compass Financial Partners, LLC (“Compass”), including the Anchor B Loan. The sale to Compass closed on February 16, 2007.

The USACM Trust exists as of the Effective Date of the Plan, which was March 12, 2007. Geoffrey L. Berman is the Trustee. Under the Plan, the USACM Trust is the successor to USACM with respect to standing to seek allowance and disallowance of Claims under 11 U.S.C. § 502(a).

Upon information derived from filings in the United States District Court, District of Nevada, *3685 San Fernando Lenders Company, LLC, et al v. Compass USA SPE, LLC, et al*, No. 2:07-cv-00892-RCJ-GWF action, the Trust believes that “Silar Advisors, LP (“Silar”) financed Compass’ acquisition of the Purchased Assets, including the loan service agreements in the USACM bankruptcy case and took a secured interest in those Purchased Assets by executing a Master Repurchase Agreement (“Repurchase Agreement”) with Compass, and by filing a UCC-1 financing statement with the State of Delaware.” *Id.* Docket 1250 at 13-14 (citations to declarations omitted).

Further, from filings in the same action, the Trust believes that “Effective as of September 26, 2007, Silar foreclosed on Compass through Asset Resolution LLC (“Asset Resolution”) and took ownership of the Purchased Assets. ... Silar created Asset Resolution as a ‘single purpose entity,’ conveyed all of its interests in the Repurchase Agreement to Asset Resolution, and Asset Resolution foreclosed on the assets of Compass, including the Purchased Assets.” (Citations omitted.) Asset Resolution LLC is now a debtor in a chapter 7 bankruptcy case pending in Nevada, case no. BK-S-09-32824-

RCJ, along with certain affiliates.⁴ William A. Leonard, Jr. was appointed trustee in the Asset Resolution case.

The Trust has attempted to monitor loan collections through monitoring the district court litigation and the ARC bankruptcy case, but has received limited information concerning servicing and resolution of direct loans by Compass/Silar/Asset Resolution or their successors, including the trustee in bankruptcy for Asset Resolution. The Trust has also been in contract with Cross FLC about certain loans that it is servicing, but Cross FLC is not servicing the Anchor B Loan.⁵ Upon review of the county records, however, counsel for the Trustee has determined that the property securing the loan was sold at a February 5, 2008 trustee's sale, with CFP Anchor B SPE LLC, a Compass designated special purpose entity, taking title with a winning \$4,504,000 credit bid placed on behalf of Compass and the Direct Lenders. The property was later sold to another entity on October 2, 2009.

b. The Anchor B Loan

USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to a borrower identified as "Anchor B, LLC." A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. (Berman Decl., ¶ 4.) The total loan amount proposed was \$5,850,000. The Offer Sheet described the investment as a "First Trust Deed Investment" and noted that the investment would be secured by a first deed of trust on approximately 9.9 acres located in Houston, Texas, on the northwest corner of Bellaire Boulevard and Southwest Freeway, improved

⁴ 10 90 SPE LLC, Fiesta Stoneridge LLC, CFP Gramercy SPE LLC, Bundy 2.5 Million SPE LLC, CFP Cornman Toltec SPE LLC, Bundy Five Million LLC, Fox Hills SPE LLC, HFAH Monaco SPE LLC, Huntsville SPE LLC, Lake Helen Partners SPE LLC, Ocean Atlantic SPE LLC, CFP, Gess SPE LLC, CFP Anchor B SPE LLC, and Shamrock SPE LLC.

⁵ By Order entered on July 19, 2010 by the Hon. Robert C. Jones in United States Bankruptcy Court (Case No. BK-S-09-32824-RCJ), the servicing rights for 19 loans were transferred to Cross, FLS. The Anchor B Loan, however, was not among the loans whose servicing rights were transferred to Cross, FLS.

1 with an approximately 180,000 square foot big-box retail building on it. The loan was
2 intended to acquire the property and cover the cost associated with refurbishing the big-
3 box store.

4 On May 31, 2005, Borrower made and delivered to various lenders, including the
5 Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by Deed of Trust”
6 (the “Note”) and a Construction Loan Agreement (Berman Decl., ¶ 5.) The Note and Loan
7 Agreement provided for a loan in the initial principal amount of \$5,850,000. The Note
8 was secured by a “Deed of Trust, Assignment of Rents, Security Agreement and Fixture
9 Filing” (“Deed of Trust”) that was recorded in the official records of Harris County, Texas
10 on June 6, 2005. The Note was also secured by a May 31, 2005 Unconditional Guaranty
11 by Tracy Suttles, as well as a UCC-1 Financing Statement covering Borrower’s personal
12 property, tangible and intangible, recorded on June 9, 2005. (Berman Decl., ¶ 5.)

13 The USACM “Loan Summary” dated July 31, 2006 and filed in this case shows
14 that Borrower was “Non-performing” on the Note as of July 31, 2006. (Berman Decl., ¶
15 6.) The USACM “Loan Summary” dated February 28, 2007 and filed in this case shows
16 that Borrower was in “Maturity and Interest Default” as of February 28, 2007. (Berman
17 Decl., ¶ 6.) As stated above, counsel for the Trustee has determined that the collateral was
18 foreclosed on and then sold.

19 During this bankruptcy case through the transfer of servicing to Compass, USACM
20 treated the Direct Lenders with respect to any interim payments by the borrower in
21 accordance with this Court’s orders and the confirmed Plan. The USACM Trust has not
22 been able to determine the ultimate disposition of the Anchor B Loan, the collateral
23 securing that loan or whether the Direct Lenders were repaid in whole or in part. (Berman
24 Decl., ¶ 7.)
25
26

c. The Anchor B Claims

Exhibit A, attached, lists Proofs of Claim filed by Direct Lenders that appear to be based upon an investment in the Anchor B Loan. (Burr Decl. ¶ 7.) **Exhibit A** identifies the Proof of Claim number, the claimant, the claimant's address, the total amount of the claim and the total amount of the claim that appears to be related to an investment in the Anchor B Loan based upon the information provided by the claimant. (Burr Declaration ¶ 7.) The claims listed in **Exhibit A** are referred to hereafter as the "Anchor B Claims." As required by Nevada LR 3007, a copy of the first page of the proof of claim for each of the claims referenced in **Exhibit A** are attached as **Exhibit C**.

II. JURISDICTION

The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and Bankruptcy Rule 3007.

III. APPLICABLE AUTHORITY

Under the Bankruptcy Code, any Claim for which a proof of claim has been filed will be allowed unless a party in interest objects. If a party in interest objects to the proof of claim, the Court, after notice and hearing, shall determine the amount of the Claim and shall allow the Claim except to the extent that the Claim is "unenforceable against the debtor . . . under any . . . applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b). A properly filed proof of claim is presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof of claim controverts the presumption, the creditor ultimately bears the burden of persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*

1 *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P.
2 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

3 **IV. THE OBJECTION**

4 The Anchor B Loan appears to have been a legitimate, arms-length transaction. In
5 addition, the Direct Lenders took a known risk by investing in a promissory note secured
6 by a lien on real property.

7 USACM is not liable for the Borrower's default or any decrease in the value of the
8 collateral.

9 The Direct Lenders fail to state a claim because USACM does not appear to have
10 breached the loan servicing agreements with respect to collection of the Anchor B Loan.
11 USACM was under no duty to foreclose on the collateral securing the Anchor B Loan or
12 take any other action.

13 This objection will not affect the Direct Lenders' right to be repaid on the Anchor B
14 Loan by the Borrower or to recover from the sale of any collateral that secured the Anchor
15 B Loan.

16 **V. CONCLUSION**

17 The USACM Trust respectfully requests that the Court disallow the claims against
18 USACM listed in **Exhibit A** in whole or in part, because those claims are based in whole or
19 in part, upon an investment in the Anchor B Loan. This objection concerns only the
20 Anchor B Loan and not any other claims of any of the Direct Lenders. The USACM Trust
21 also requests such other and further relief as is just and proper.

1 Dated: April 20, 2011.

2 LEWIS AND ROCA LLP

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5 Robert M. Charles, Jr., NV 6593
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11 *Attorneys for the USACM Liquidating Trust*

12 Copy of the foregoing and pertinent
13 portion of Exhibits mailed by first
14 class postage prepaid U.S. Mail on
15 April 20, 2011 to all parties listed on
16 Exhibit A attached.

17 LEWIS AND ROCA LLP

18 s/ Marie Mancino
19 Marie Mancino
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